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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 514

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

PAN AMERICAN PETROLEUM CORPORATION, APPELLEES

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY, APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

GREAT SOUTHERN LUMBER COMPANY, BOGALUSA PAPER COMPANY, INCORPORATED, APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

STANDARD OIL COMPANY OF LOUISIANA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

31506—37

No. 530

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

HUMBLE OIL & REFINING COMPANY, APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

MAGNOLIA PETROLEUM COMPANY, APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE TEXAS COMPANY (HOUSTON PLANT), APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

GULF REFINING COMPANY, APPELLEE

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE TEXAS COMPANY (PORT ARTHUR AND PORT NECHES PLANTS), APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

MOTION OF APPELLANTS TO REVERSE

MOTION

United States of America and Interstate Commerce Commission, appellants, respectfully move that this Court, without awaiting briefs and oral arguments, reverse the decrees entered April 28 and May 1, 1937, in the above entitled cases by the District Courts of the United States for the Eastern District of Louisiana and the Southern District of Texas.

STATEMENT IN SUPPORT OF MOTION

In support of this motion[1] appellants respectfully show:

1. These cases involve the validity of nine orders issued by the Interstate Commerce Commission. Each order directs the railroad company or companies therein named to cease and desist paying allowances to a specified shipper for "car spotting" services performed by the shipper within its industrial plant. Each order rests upon a separate report of the Commission's findings and conclusions. The ultimate findings are the same in each report, and the following are typical:

> We find that the respective interchange tracks as described of record are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carriers are compensated in their line-haul

[1] As a precedent for this motion see *Williamsport Co.* v. *United States*, 277 U. S. 551, 556–557.

> rates begins and ends at said interchange tracks; that the service performed by the Celotex Company beyond those points is a plant service; and that by payment of an allowance to the Celotex Company for service performed beyond the interchange tracks on interstate shipments, respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally and refund or remit a portion of the rates collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

Each of the orders was attacked in a separate bill of complaint, five of the suits being instituted in the Southern District of Texas and four of them in the Eastern District of Louisiana. The cases were heard together by a three-judge court at New Orleans, Louisiana, and a single opinion was filed covering all the cases. The opinion holds (1) that the spotting service is transportation service which the carriers are required to perform; (2) that the evidence does not show that the railroads are prohibited by appellees or prevented by "abnormal" physical conditions in the plants from performing the service; (3) that "the Commission was without power to wholly prohibit such allowances," and had power only to determine whether the allowances were reasonable or resulted in unlawful preference or discrimination; and (4) that the findings made by the Commission are insufficient to support the

cease and desist orders because they do not include a finding that the allowances were unreasonable, unduly preferential, or unjustly discriminatory.

3. The opinion below was filed February 24, 1937, and a final decree in each case, annulling and enjoining the order, was entered on April 28, 1937, in the Eastern District of Louisiana and on May 1, 1937, in the Southern District of Texas. Counsel for the Government, however, were not advised or informed of the entry of the decrees until May 22, 1937. Meantime, this Court had, on May 17, 1937, rendered its decision in No. 734, October Term, 1936, *United States* v. *American Sheet and Tin Plate Company,* 301 U. S. 402, in which it sustained the validity of six similar "car spotting" orders of the Commission which had been enjoined and annulled in the Western District of Pennsylvania. On May 26, 1937, Government counsel filed motions with the courts below to dissolve the final decrees and to rehear and reconsider these cases in view of the decision by this Court of identical questions in *United States* v. *American Sheet and Tin Plate Company, supra.* Upon being informed by the presiding judge that it would be impossible to assemble the three-judge court for a hearing upon the motion prior to July 1, 1937, and inasmuch as the 60-day period provided by the statute for appeals would expire on June 27 and June 29, respectively, the motions for rehearing were withdrawn and these appeals were taken.

4. The questions presented in these cases are:

(1) Whether the Commission exceeded its authority in issuing the orders.

(2) Whether the findings made by the Commission in each case, as described above, are sufficient to support the accompanying order.

(3) Whether the orders are supported by substantial evidence.

5. These identical questions were decided by this Court May 17, 1937, in *United States* v. *American Sheet and Tin Plate Company, supra,* (petition for reargument denied October 11, 1937), and were presented in *Goodman Lumber Company* v. *United States, et al.,* No. 855, October Term, 1936, and *A. O. Smith Corporation* v. *United States,* No. 856, October Term, 1936, 301 U. S. 669, (petitions for rehearing denied October 11, 1937), in which this Court, on June 1, 1937, upon is own initiative and without awaiting briefs or oral arguments, sustained the validity of two other similar "car spotting" orders of the Commission by affirming decrees of the District Court for the Eastern District of Wisconsin, citing its decision in *United States* v. *American Sheet and Tin Plate Company, supra.*

6. The eight orders of the Commission which were sustained by this Court in the three cases just cited and the nine orders involved in the cases at bar were all issued by the Commission upon the record of testimony in a single proceeding, namely, *Ex parte No. 104, Practices of Carriers Affecting*

Revenues or Expenses, Part II, Terminal Services, 209 I. C. C. 11. Each of the fifteen orders rests upon substantially identical findings made by the Commission in supplemental reports recapitulating the testimony of record concerning the spotting service at a particular industrial plant.

7. In *United States* v. *American Sheet and Tin Plate Company, supra,* this Court held (1) that the Commission had power to issue orders prohibiting the allowances, and rejected the contention (adopted by the courts below in these cases) that the Commission had power only to determine whether the allowances were reasonable in amount and whether they caused undue preference or unjust discrimination; (2) that the orders were not foreclosed by earlier decisions of the Commission or by alleged "custom" of railroads of including spotting service in their line-haul rates; (3) that the Commission's findings, of which the following with respect to the American Sheet & Tin Plate Company are typical, were sufficient to support the orders:

> We find that the interchange tracks at this plant are reasonably convenient points for the delivery and receipt of interstate shipments of carload freight; that the industry performs no service beyond such points of interchange for which the respondent carrier is compensated under its interstate line-haul rates; and that by the payment of an allowance the respondent carriers provide the means by which the industry enjoys a

> preferential service not accorded to shippers generally, and refund or remit a portion of the rates or charges collected or received as compensation for the interstate transportation of property, in violation of section 6 (7) of the act.

and (4) that the evidence summarized in the Commission's reports was sufficient to support the orders.

Thus, the opinion in that case decides every question presented in these cases, with the possible exception of the question whether the record contains sufficient evidence concerning the several plants of the appellees to support the orders. That there is ample evidence of record to support the orders can be readily ascertained, as this Court presumably did in affirming the decrees in *Goodman Lumber Company* v. *United States, supra;* and *A. O. Smith Corporation* v. *United States, supra,* by turning to the following pages of the transcript of record in the cases at bar:[2]

Name of appellee:	Page
Pan American Petroleum Corporation	630–645
The Celotex Company	530–561
Great Southern Lumber Company Bogalusa Paper Company, Inc.	562–574
Standard Oil Company of Louisiana	575–629
Humble Oil & Refining Company	761–777
Magnolia Petroleum Company	675–723
The Texas Company (Houston plant)	724–749
Gulf Refining Company	646–674
The Texas Company (Port Arthur and Port Neches plants)	750–760

[2] References are to the transcript in No. 514 as paged by the Clerk of this Court.

Appellants respectfully submit that for the foregoing reasons there is no occasion for the delay and expense of printing the record in these cases, or for consuming the time of this Court with briefs and oral arguments, and that the Court should reverse the decrees without awaiting briefs and oral arguments.

STANLEY REED,
Solicitor General.

DECEMBER, 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937